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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 070718367-2061-02]

RIN 0648-AV33

Fisheries of the Exclusive Economic Zone Off Alaska; Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations that govern fisheries managed under the Western Alaska Community Development Quota (CDQ) Program. These revisions are needed to comply with certain changes made to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in 2006. Changes include revising regulations associated with recordkeeping, vessel licensing, catch retention requirements, and fisheries observer requirements to ensure that they are no more restrictive than the regulations in effect for comparable non-CDQ fisheries managed under individual fishing quotas or cooperative allocations. In addition, NMFS removes CDQ Program regulations that now are inconsistent with the Magnuson-Stevens Act, including regulations associated with the CDQ allocation process, the transfer of groundfish CDQ and halibut prohibited species quota, and the oversight of CDQ groups' expenditures.

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 12668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or, by e-mail to OIRA_submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish and crab fisheries of the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (groundfish FMP) and the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (crab FMP). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Act (16 U.S.C. 1801, et seq.). The International Pacific Halibut Commission and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982. Regulations governing the groundfish, crab, and halibut fisheries in the BSAI and implementing the FMPs appear at 50 CFR parts 300, 600, 679, and 680.

Background

The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The purposes of the program are to provide western Alaska communities the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska. The CDQ Program was developed to redistribute some of the BSAI fisheries' economic benefits to adjacent communities by allocating a portion of commercially important BSAI fisheries species to such communities. Regulations establishing the CDQ Program were first implemented in 1992. The CDQ Program was incorporated into the Magnuson-Stevens Act in 1996 through the Sustainable Fisheries Act (Public Law 104-297).

NMFS allocates a portion of the annual catch limits—for a variety of commercially valuable marine species—in the BSAI to the CDQ Program. These apportionments are then allocated among six different non-profit managing organizations representing different affiliations of communities (CDQ groups). CDQ groups use the revenue derived from the harvest of their fisheries allocations to fund economic development activities and provide employment opportunities.

This final rule amends regulations associated with the management of the CDQ fisheries conducted in the BSAI, as well as regulations associated with administrative aspects of the CDQ Program. The regulatory amendments are necessary to align existing regulations with changes made to the Magnuson-Stevens Act in 2006. This rule revises CDQ program regulations associated with fisheries observer coverage requirements, bycatch retention, vessel licensing, recordkeeping, and catch reporting to ensure that they are no more restrictive than the regulations

in effect for comparable non-CDQ individual fishing quota (IFQ) fisheries and fisheries managed with cooperatives. The final rule revises regulations that may be considered more restrictive because they subject CDQ fishery participants to additional costs, to additional catch reporting requirements, or to additional controls beyond the measures in place for comparable non-CDQ fisheries.

The proposed rule for this action was published on July 13, 2010 (75 FR 39892), and the public comment period ended on August 12, 2010. Additional information and a description of the action are provided in detail in the preamble to the proposed rule and are not repeated here. Most of the regulatory amendments described in the proposed rule are implemented in this final rule. These include:

- Revising the CDQ Program purpose statement in § 679.1,
- Removing, revising, and adding definitions in § 679.2,
- Removing all regulations in § 679.30 (except paragraph (e)(1) related to quota transfers, which would be relocated to § 679.31) because they are not consistent with requirements in the Magnuson-Stevens Act associated with CDQ allocations, the allocation adjustment process, and the submission and maintenance of community development plans,
- Revising the CDQ catch monitoring and accounting regulations in § 679.32 to align with requirements in effect for comparable non-CDQ fisheries that are managed with IFQs or cooperatives.
- Revising CDQ observer coverage requirements in § 679.50, and

- Revising §§ 679.2, 679.4, 679.5, 679.7, 679.24, and 679.43 to remove obsolete regulations, correct errors in CDQ-related regulations that were made in prior rulemakings, and clarify CDQ-related terminology.

NMFS received comments on some of the regulatory amendments described in the proposed rule. After considering these comments, NMFS determined that several changes to the regulatory amendments described in the proposed rule are warranted and they have been made in this final rule. These changes are described below in “Comments and Responses” and “Changes from the Proposed Rule.”

Comments and Responses

Comment 1: NMFS stated in the proposed rule that because the fixed gear Pacific cod fishery was not rationalized with IFQ or cooperative allocations, vessels fishing for CDQ Pacific cod with fixed gear would be required to comply with the CDQ observer coverage requirements at 50 CFR § 679.50(c)(4). However, after publication of the proposed rule, fishing companies participating in the Pacific cod hook-and-line catcher/processor sector notified NMFS that they had formed a voluntary fishing cooperative. This cooperative is now active, and fishes for both CDQ and non-CDQ Pacific cod. The vessels in this cooperative are subject to the fisheries observer requirements at 50 CFR § 679.50 when fishing for non-CDQ Pacific cod with fixed gear. Section 679.50 stipulates that observer coverage requirements for this vessel category include carrying a single observer for 30 to 100 percent of fishing days per calendar quarter depending on a vessel’s length, gear type, and other parameters. These requirements are less restrictive than those that apply to vessels participating in the fixed-gear Pacific cod CDQ fishery, which require fixed-gear catcher/processors, regardless of length, to carry two observers

while Pacific cod CDQ fishing. Accordingly, the Magnuson-Stevens Act provision at section 305(i)(1)(B)(iv) requiring that CDQ fisheries be managed no more restrictively than fisheries with “fishing cooperatives” applies to the Pacific cod CDQ fishery.

Response: NMFS acknowledges that a voluntary fishing cooperative has been formed by the fishing companies participating in the hook-and-line catcher/processor Pacific cod fishery. NMFS received confirmation of the formation of this cooperative in a letter from the Freezer Longline Conservation Cooperative submitted on May 19, 2011. Based on additional explanation provided in section 116(b)(2) of the Magnuson-Stevens Reauthorization Act of 2006 (Public Law 109-479, 120 Stat. 3606 (2007)), the CDQ regulation of harvest requirements at section 305(i)(1)(B) of the Magnuson-Stevens Act also apply when a voluntary fishing cooperative has formed in a non-CDQ sector (Public Law 109-479, § 116(b)(2), 120 Stat. 3575, 3606 (2007) (codified at 16 U.S.C. § 1855 note)). Section 116(b)(2) states that, for purposes of section 305(i)(1) of the Magnuson-Stevens Act, a “fishing cooperative” means “. . . a fishing cooperative whether or not authorized by a fishery management council or Federal agency, if a majority of the participants in the sector are participants in the fishing cooperative.”

NMFS has determined that the CDQ observer coverage requirements for vessels participating in the CDQ fixed gear Pacific cod fishery are more restrictive than the observer coverage requirements that apply to fixed gear catcher/processors participating in the non-CDQ Pacific cod fishery. Therefore, NMFS agrees with the comment and revises the relevant CDQ fisheries management regulations at § 679.32 with this final rule to ensure that the regulation of harvest provisions of the Magnuson Stevens Act apply to this sector and to vessels that are groundfish CDQ fishing while concurrently participating in a voluntary fishing cooperative. A

complete description of these changes is in the section entitled “Changes from the Proposed Rule.”

Comment 2: The commenter notes that the proposed spelling of the names of two CDQ-eligible communities in the proposed rule differs from the spelling used in section 305(i)(1)(D) of the Magnuson-Stevens Act. NMFS should spell out the names of Saint George and Saint Paul, rather than abbreviating “Saint” to “St.”

Response: NMFS agrees, and revises Table 7 to 50 CFR part 679 to incorporate the full spelling of the names of these two communities.

Comment 3: NMFS should reconsider how it interprets the Magnuson-Stevens Act paragraph that addresses the regulation of CDQ harvest. Specifically, NMFS should interpret the phrase “nontarget species” in section 305(i)(1)(B)(iv) to include prohibited species quota (PSQ) allocated to the CDQ program, consistent with the plain language of the statute. Otherwise, PSQ restrictions could be applied to the CDQ fisheries in a more restrictive manner than prohibited species catch (PSC) restrictions applicable to non-CDQ fisheries.

Response: In the proposed rule prepared for this action (see ADDRESSES), NMFS explained that Magnuson-Stevens Act requirements at section 305(i)(1)(B)(iv) do not apply to regulations governing the catch of PSQ in the CDQ fisheries. NMFS based this interpretation on existing fisheries management regulations in 50 CFR part 679, in particular those defining “harvesting or to harvest” as being associated with the catch and retention of fish. After considering the comment, NMFS has determined that this is still a reasonable interpretation of section 305(i)(1)(B)(iv), and that “nontarget species” refers to groundfish species other than the primary target species that a vessel catches in a specific haul or during a given fishing trip.

The plain language of section 305(i)(1)(B)(iv) applies the provision to the “harvest of allocations under the program.” Section 305(i)(1)(B)(i) establishes the CDQ program allocations, stating that “the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program.” (emphasis added). PSC limits established in the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries, and the corresponding PSQ allocations from those limits to the CDQ program, are not directed fisheries and regulations at 50 CFR § 679.21(b)(2) require operators of vessels engaged in directed fishing for BSAI groundfish to minimize its catch of PSC. Therefore, PSQ is not an allocation to the CDQ program for purposes of section 305(i)(1)(B). NMFS is not persuaded by the commenter’s argument that the plain language of section 305(i)(1)(B)(iv) requires inclusion of PSQ in the phrase “nontarget species” and has determined that the language of section 305(i)(1)(B) supports the agency’s interpretation.

The CDQ Program as a whole, and CDQ groups individually, receive a specific allocation of each BSAI PSC category as PSQ. This includes allocations of Pacific halibut, Chinook salmon, non-Chinook salmon, and three crab species. CDQ groups are prohibited from exceeding their allocations of halibut and Chinook salmon PSQ. The complete catch of non-Chinook salmon and crab PSQ amounts results in area closures, rather than fishery closures. Each CDQ group has control over its PSQ allocations and may internally allocate them among its target fisheries as it considers appropriate. The CDQ fisheries and CDQ groups are not

subject to non-CDQ fishery or management area closures that may occur during the year as non-CDQ sectors fully catch their halibut, crab, and salmon PSC apportionments.

This action will not change the management practices for PSQ management in the CDQ fisheries. As noted in the EA/RIR prepared for this action (See ADDRESSES), NMFS expects that this action will have minimal effects on prohibited species. This action does not amend prohibitions against exceeding annual PSQ catch limits. However, it will amend regulations to allow the transfer of halibut PSQ either before or after such quota is caught, as will be allowed for groundfish CDQ transfers. Accordingly, NMFS does not believe that it is appropriate to revise its interpretation of the Magnuson-Stevens Act at section 305(i)(1)(B)(iv) to incorporate PSQ management. The treatment of PSQ will be addressed on a case-by-case basis during the development of additional fisheries management programs that establish individual quotas or fisheries cooperatives.

Comment 4: The commenter raises general concerns that the proposed rule would subject fishermen to additional paperwork or require additional fishing permits or licenses.

Response: As explained in the proposed rule, NMFS is revising fisheries regulations to ensure that the CDQ fisheries are harvested no more restrictively than other Federal fisheries managed with quotas or fisheries cooperatives. The changes that are implemented by this final rule do not add additional paperwork or permitting requirements, with the exception of the creation of an application that may be used to request the use of alternative CDQ harvesting regulations for vessels that are operating in a voluntary fishery cooperative. Contrary to the commenter's assertions, this action actually reduces catch monitoring and reporting requirements for participants in certain groundfish CDQ fisheries.

Comment 5: The comment raises general concerns about the development and implementation of the Crab Rationalization Program, which was implemented by NMFS in 2005.

Response: This comment is not specifically related to the proposed rule.

Changes from the Proposed Rule

This final rule includes changes from the proposed rule. These changes fall into four categories: (1) revisions needed to apply the Magnuson-Stevens Act regulation of harvest provision when a voluntary cooperative exists in a non-CDQ sector (see response to Comment 1); (2) revisions needed to accommodate changes made to 50 CFR part 679 by other rules that have been published since the proposed rule was published; (3) one revision needed to remove an obsolete definition; and (4) a correction to add an inadvertently deleted paragraph back into catch monitoring requirements for catcher/processors at § 679.32(c)(3).

First, a new paragraph (e) is added to § 679.32 to provide a process for relief from more restrictive CDQ regulations if a voluntary cooperative forms in a non-CDQ sector. Section 679.32(e) allows a CDQ group, a representative of an association representing the CDQ groups, or a representative of a voluntary fishing cooperative to request approval from NMFS to use non-CDQ harvest regulations while groundfish CDQ fishing. A person requesting approval to use non-CDQ harvest regulations must submit to NMFS an application that will provide NMFS with information about the submitting entity, the applicable cooperative and the fisheries in which that cooperative participates, the vessels participating in that cooperative, and a copy of the contract or affidavit documenting the formal existence of the cooperative. NMFS will review this information and make determinations about whether a majority of the participants in the sector in

which the voluntary cooperative has formed are participants in the cooperative and whether the CDQ regulations are more restrictive than the non-CDQ regulations applicable to that sector. If NMFS approves an application, vessel operators operating in the cooperative would have to comply with the applicable regulations in place for a particular non-CDQ groundfish fishery based on their vessel's operational category and the directed groundfish fisheries in which they participated. Specifically, vessel operators would not have to comply with the applicable operational requirements in § 679.32(c)(3)(i) associated with (1) observer coverage levels and experience requirements, (2) observer sampling stations, and (3) the information used to accrue catch against the CDQ allocations. Operators also would not have to comply with CDQ observer coverage requirements in § 679.50(c)(4), but would have to comply with the more general observer requirements detailed in other paragraphs of § 679.50 that apply when these vessels are fishing in the non-CDQ fisheries.

As noted in Comment 1 above, a voluntary fishing cooperative has been formed by the fishing companies participating in the hook-and-line catcher/processor Pacific cod fishery. If NMFS received an application to use non-CDQ harvest regulations while vessels in this cooperative were fishing for Pacific cod CDQ, NMFS would review the application to ensure that (1) it was complete and accurate, (2) that the vessels listed on the application form comprise the majority of the vessels in the hook-and-line catcher/processor Pacific cod sector, and (3) the CDQ harvest regulations are more restrictive than the non-CDQ harvest regulations. NMFS defines the hook-and-line catcher/processor sector in the same way as it is defined in the Consolidated Appropriations Act, 2005 (Public Law 108-447, 118 Stat. 2886). That Act defines the "longline catcher/processor subsector" to mean "the holder of an LLP license . . . that is

endorsed for Bering Sea or Aleutian Islands catcher processor activity, C/P, P. cod, and hook-and-line gear.” Thus, NMFS’ review would include verifying that the vessels listed on the application form comprise greater than 50 percent of the vessels and associated LLP groundfish licenses eligible to be in this particular subsector.

In conjunction with allowing vessels in a voluntary cooperative to operate under non-CDQ groundfish fisheries regulations while fishing for groundfish CDQ, NMFS would also have to modify its CDQ catch accounting practices. This would entail using the production data that is already required to be submitted under § 679.5, rather than observer data, for some proportion of the catch made by vessels in a voluntary fishery cooperative. This is because the CDQ regulations in § 679.50(c)(4) require a higher level of observer coverage than is usually required for vessels fishing for non-CDQ groundfish. This level of observer coverage would be decreased for the vessels that are directed fishing for CDQ while operating in a voluntary cooperative. As a result, NMFS will have to use a combination of data sources to determine a vessel’s total groundfish CDQ and PSQ catch. This will include the use of observer data, if available, production data submitted by the vessel operator, and NMFS-calculated bycatch rates for PSQ species.

Second, the following revisions from the proposed rule are needed to reflect revisions made to 50 CFR part 679 by other rules that have been published since the proposed rule was published:

1. The replacement of the term “NMFS-certified observer” with the term “observer” in numerous sections of 50 CFR part 679, as described in the proposed rule for this action, will still occur in this final rule. However, some of these changes have already occurred in some sections

through other rulemaking, including §§ 679.5, 679.7, 679.21 and 679.50. Therefore, some of the proposed changes to terminology are no longer needed and these have been removed from the remove/add table.

2. The deletions and revisions to prohibitions in § 679.7(d) that are detailed in the proposed rule are still applicable; however, the proposed paragraph numbering is not. Following the publication of the proposed rule associated with this action, a different regulatory action re-organized and revised § 679.7(d). That action, Amendment 91 to the groundfish FMP, implemented Chinook salmon bycatch management measures in the Bering Sea pollock fisheries (75 FR 53026, August 30, 2010). Those measures also are applicable to the pollock CDQ fisheries, and include revisions to prohibitions associated with salmon PSQ. The final rule implementing Amendment 91 to the groundfish FMP categorized related CDQ prohibitions in § 679.7(d) into general, catch accounting, and prohibited species categories. This also resulted in a new paragraph numbering hierarchy. The paragraph redesignation associated with that change encompasses many of the revisions to § 679.7(d) implemented by this action.

3. The proposed change to § 679.21(e)(3)(i)(A)(3)(i) is no longer necessary. The proposed revision, which would have corrected an omission made in a prior rulemaking, was made by the final rule implementing Amendment 91 to the groundfish FMP.

4. Due to the redesignation of the paragraphs under § 679.7(d), the proposed revision to a cross reference in § 679.22(h) is changed. The original revision was described in the proposed rule; however, the cross-reference changed due to the implementation of Amendment 91 to the groundfish FMP and its associated changes to § 679.7(d).

5. Some cross-references for § 679.32 that were included in the proposed rule have become obsolete due to the implementation of more recent regulatory actions. Such cross-references are revised to reflect current regulatory citations.

Third, NMFS is deleting the definition of “resident fisherman” from § 679.2. This term was originally developed for the CDQ program and is only used in the definition of “qualified applicant” and is not used elsewhere in 50 CFR part 679. NMFS proposed to delete the term “qualified applicant” in the proposed rule and the proposed deletion of the term “qualified applicant” renders the term “resident fisherman” obsolete. Therefore, NMFS is deleting the terms “qualified applicant” and “resident fisherman” in this final rule.

Fourth, NMFS inadvertently deleted an existing regulatory requirement for catcher/processors using nontrawl gear to provide an observer sampling station while fishing for groundfish CDQ in the proposed rule associated with this action (75 FR 39892, July 13, 2010). This final rule does not include the proposed deletion of this requirement to § 679.32(c)(3)(i)(F). NMFS did not intend to remove this existing regulation as the monitoring requirements for catcher/processors using nontrawl gear must be aligned with those in place for catcher/processors using trawl gear while fishing for groundfish CDQ and motherships accepting deliveries of groundfish CDQ. Vessels in each of these categories are required to provide such sampling stations to aid in fisheries observers’ catch weighing, sampling, and data collection duties.

Classification

The Administrator, Alaska Region, NMFS, has determined that this rule is necessary for the conservation and management of the Alaska groundfish fisheries managed under the

groundfish FMP and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to comments, and a summary of the analyses completed to support the action. Each item in section 604(a)(1)–(5) of the RFA has been addressed in the classification section of the final rule. A copy of this analysis is available from NMFS (see ADDRESSES).

NMFS published the proposed rule for this action on July 13, 2010 (75 FR 39892), with comments invited through August 12, 2010. An IRFA was prepared, and summarized in the “Classification” section of the proposed rule. The description of this action, the need for and objectives of the action, and the legal reasons for selecting the alternative implemented by this action are described elsewhere in this preamble and are not repeated here.

NMFS received two responses, containing five unique comments, about the proposed rule. No public comments were specifically received about the IRFA. However, one of the public comments requested that NMFS consider additional revisions to CDQ catch monitoring regulations with respect to the hook-and-line catcher/processor sector. Such revisions would decrease the applicable fisheries observer requirements for this vessel category while such vessels were fishing for Pacific cod CDQ. Comment 1 discusses this issue in detail in the section titled “Response to Comments.” NMFS is implementing changes to CDQ catch monitoring

regulations for vessels that fish for groundfish CDQ while participating in a cooperative as part of this action.

The entities directly regulated by this action are the six CDQ groups that participate in the halibut, sablefish, groundfish, and pollock CDQ fisheries in the BSAI. CDQ groups are considered to be small entities under the RFA's categorization of small, non-profit organizations. This action is expected to reduce the costs associated with various aspects of participating in these CDQ fisheries. These include costs associated with different CDQ fisheries' regulatory requirements governing (1) fisheries observer coverage levels, (2) catch retention and accounting, (3) vessel eligibility designation, and (4) vessel licensing.

All six CDQ groups annually are allocated groundfish CDQ, halibut CDQ, and crab CDQ. These groups participate, either directly or indirectly, in the commercial harvest of these allocations. CDQ groups receive royalties from the successful harvest of CDQ by commercial fishing companies, as well as access to employment and training opportunities for their communities' residents. Royalties and income from CDQ harvesting activities are used to fund economic development projects in CDQ communities. Based on the most recently available information, the CDQ groups received approximately \$60 million in royalties from the harvest of their CDQ allocations in 2009. Participants in the CDQ fisheries affected by this action will no longer be subject to regulations that are more costly, complex, or burdensome than those that apply to comparable IFQ fisheries or fisheries managed with cooperatives. Thus, this action is not expected to have an adverse economic impact on the small entities affected by this action.

NMFS evaluated three alternatives associated with this action. Alternative 1, the status quo, would maintain different fisheries management regulations for the halibut, fixed gear

sablefish, and pollock CDQ fisheries. Each of these fisheries has a comparable IFQ or cooperative fishery. However, due to the different policies and objectives associated with the original development of the regulations governing the CDQ fisheries, CDQ harvest regulations sometimes differed from those in place for the non-CDQ fisheries associated with this action. Maintaining existing regulations associated with the CDQ fisheries that are more restrictive than those in place for comparable IFQ and cooperative fisheries would not comply with the Magnuson-Stevens Act.

Alternative 2, the preferred alternative, will revise CDQ fisheries management regulations in 50 CFR part 679 to align them with regulations that govern fisheries managed with IFQs and fisheries managed with cooperatives. The regulatory revisions implemented by this rule include: (1) separating fixed gear sablefish CDQ and pollock CDQ from regulations associated with the other groundfish CDQ fisheries; (2) exempting participants in the sablefish CDQ fishery from needing a license limitation program groundfish license by excluding fixed gear sablefish CDQ from the definition of "license limitation species"; (3) removing a requirement that CDQ groups annually submit a request to NMFS to designate specific vessels as eligible to harvest groundfish CDQ on their behalf; (4) revising CDQ catch monitoring requirements; and (5) revising regulations to align observer coverage requirements for the sablefish, halibut, groundfish, and pollock CDQ fisheries with comparable non-CDQ fisheries. On the basis of the best available information, this preferred alternative imposes the minimum adverse economic impact on directly regulated small entities, while achieving the objectives of the regulatory action, among all the alternatives available to the agency. The preferred

alternative incorporates regulatory revisions that reduce the potential economic and operational burden on small entities.

Alternative 3 would amend regulations to fully integrate the sablefish CDQ fisheries into the sablefish IFQ fisheries management system. It also would make the same general changes proposed for Alternative 2 (described in the preceding paragraph). Sablefish CDQ currently is managed in conjunction with all other groundfish CDQ fisheries. In contrast, halibut CDQ is managed in conjunction with the halibut IFQ fisheries, and is thus subject to IFQ-related regulations. Alternative 3 would (1) require CDQ groups to obtain sablefish CDQ permits prior to conducting directed fishing for sablefish, (2) incorporate sablefish CDQ into the IFQ recordkeeping and reporting requirements and make IFQ prohibitions applicable to the sablefish CDQ fishery, and (3) incorporate the sablefish CDQ fishery into IFQ regulations associated with quota transfers and catch accounting.

Both Alternatives 2 and 3 would meet the requirement of the Magnuson-Stevens Act that CDQ fisheries be managed no more restrictively than fisheries managed with IFQs or harvesting cooperatives by matching regulations as closely as possible for relevant CDQ and non-CDQ fisheries. In the case of Alternative 3, the sablefish CDQ fishery would be fully integrated into both the regulations and the administrative structure in place for the sablefish IFQ fishery.

Alternative 2 was selected as the preferred alternative primarily based on the potential changes that each alternative would bring to the fixed gear sablefish CDQ fishery. NMFS believes that Alternative 2 would result in the least disruptive change to the CDQ groups and CDQ fisheries, while meeting the regulation of harvest requirements in the Magnuson-Stevens Act. Alternative 2 would amend regulations for the CDQ fisheries affected by this action to

match regulations in place for most comparable non-CDQ fisheries, but would not make as many changes to the program as Alternative 3. Alternative 2 would not integrate the sablefish CDQ fishery into the sablefish IFQ program. CDQ groups would not be subject to sablefish CDQ permitting requirements and additional IFQ-related reporting requirements, nor would NMFS have to implement such requirements. Furthermore, keeping fixed gear sablefish CDQ under the groundfish CDQ catch accounting and management system would make it easier for NMFS to monitor the catch and transfer of the multiple categories of sablefish CDQ (i.e., trawl and non-trawl gear allocations) allocated to the CDQ Program and CDQ groups. Placing the fixed-gear sablefish CDQ in the sablefish IFQ catch accounting system would add complexity to the sablefish CDQ transfer process.

NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes while minimizing the economic impact of this rule on small entities.

NMFS also is not aware of any other federal rules that would duplicate, overlap, or conflict with this action.

This final rule removes a number of collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648-0269. The collection-of-information requirements that will be removed from the collection with publication of this final rule and its public reporting burden per response is estimated at: one hour for CDQ vessel eligibility request; 520 hours for a community development plan (CDP); 20 hours for an annual budget

report; eight hours for an annual budget reconciliation report; 40 hours for a substantial amendment to a CDP; and eight hours for a technical amendment to a CDP.

This final rule contains a new collection-of-information requirement subject to the PRA and which has been approved by OMB under control number 0648-0269. NMFS is revising regulations to allow vessels that are fishing for groundfish CDQ, while operating in a voluntary fishery cooperative, to submit to NMFS an application for the use of non-CDQ regulations when the CDQ regulations are more restrictive than the regulations otherwise required for participants in non-CDQ groundfish CDQ fisheries. This provision will be implemented through an application to NMFS for approval to use non-CDQ harvest regulations. NMFS estimates that the public reporting burden is five hours per response. Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS (see ADDRESSES), and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency

shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

The preamble to this final rule serves as the small entity compliance guide. The action does not require any additional compliance from small entities that is not described in the preamble. Copies of the final rule are available from NMFS (see ADDRESSES) and at the following website: <http://www.alaskafisheries.noaa.gov>.

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 2, 2012.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
for Regulatory Programs,
National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS amends 50 CFR parts 679 and 680 as follows:

PART 679— FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq., 3631 et seq.; Pub. L. 108–447.

2. In § 679.1, revise paragraph (e) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(e) Western Alaska Community Development Quota (CDQ) Program. Regulations in this part govern the Western Alaska CDQ Program (see subparts A, B, C, D, and E of this part). The purpose of the program is specified in 16 U.S.C. 1855(i)(1)(A).

* * * * *

3. In § 679.2,

a. Remove the definitions for “CDQ group number”, “CDQ project”, “Community Development Plan”, “Eligible vessel”, “Managing organization”, “Qualified applicant”, and “Resident fisherman”.

b. Revise the definitions for “CDQ allocation”, “CDQ group”, “CDQ Program”, paragraph (1) of “Eligible community”, “Groundfish CDQ fishing”, “Halibut CDQ fishing”, “License limitation groundfish”, “PSQ allocation”, “PSQ reserve”, and

c. Add definitions for “CDQ number”, “Pollock CDQ fishing”, and “Sablefish CDQ fishing” in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group.

CDQ group means an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D). CDQ groups are listed in Table 7 to this part.

CDQ number means a number assigned to a CDQ group by NMFS that must be recorded and is required in all logbooks and reports submitted by vessels harvesting CDQ or processors taking deliveries of CDQ.

CDQ Program means the Western Alaska Community Development Quota Program.

* * * * *

Eligible community means: (1) for purposes of the CDQ Program, a community identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D). Eligible communities are listed in Table 7 to this part.

* * * * *

Groundfish CDQ fishing means fishing that results in the retention of any groundfish CDQ species, but that does not meet the definition of pollock CDQ fishing, sablefish CDQ fishing, or halibut CDQ fishing.

* * * * *

Halibut CDQ fishing means using fixed gear, retaining halibut CDQ, and not retaining groundfish over the maximum retainable amounts specified in § 679.20(e) and Table 11 to this part.

* * * * *

License limitation groundfish means target species specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude, sablefish managed under the IFQ program, sablefish managed under the fixed gear sablefish CDQ reserve, and pollock allocated to the Aleutian Islands directed pollock fishery and harvested by vessels 60 ft (18.3 m) LOA or less, are not considered license limitation groundfish.

* * * * *

Pollock CDQ fishing means directed fishing for pollock in the BS or AI under a pollock allocation to the CDQ Program authorized at § 679.31(a) and accruing pollock catch against a pollock CDQ allocation.

* * * * *

PSQ allocation means a percentage of a PSQ reserve specified under § 679.31 that is assigned to a CDQ group.

PSQ reserve means the amount of a prohibited species catch limit established under § 679.21(e) that has been allocated to the groundfish CDQ Program under § 679.21(e)(3)(i) and (e)(4)(i).

* * * * *

Sablefish CDQ fishing means fishing using fixed gear, retaining sablefish CDQ, and that results in the retained catch of sablefish CDQ plus sablefish IFQ being greater than the retained catch of any other groundfish species or species group.

* * * * *

4. In § 679.4, revise paragraph (e)(1)(i) to read as follows:

§ 679.4 Permits.

* * * * *

(e) * * *

(1) * * *

(i) The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the requirements of this paragraph (e) for the catch of CDQ halibut.

* * * * *

5. In § 679.5,

a. Remove paragraph (n)(2),

b. Redesignate paragraphs (n)(1)(i), (n)(1)(ii), and (n)(1)(iii) according to the following table, and

Old paragraph(s)	New paragraph(s)
(n)(1)(i)	(n)(2)
(n)(1)(ii)	(n)(3)
(n)(1)(ii)(A) and (B)	(n)(3)(i) and (ii), respectively
(n)(1)(iii)	(n)(4)
(n)(1)(iii)(A) and (B)	(n)(4)(i) and (ii), respectively

c. Revise the heading of § 679.5(n) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(n) CDQ and PSQ transfers.

* * * * *

6. In § 679.7,

a. Remove paragraphs (d)(3), (d)(4), (d)(6), (d)(7)(i)(H), and (d)(7)(ii)(A),

b. Redesignate paragraph (d) according to the following table,

Old paragraph(s)	New paragraph(s)
------------------	------------------

(d)(5)	(d)(3)
(d)(7)	(d)(4)
(d)(7)(ii)(B)	(d)(4)(ii)
(d)(8)	(d)(5)
(d)(9)	(d)(6)
(d)(10)	(d)(7)

c. Revise newly redesignated paragraph (d)(4)(ii) and paragraph (f)(3)(ii), and

d. Add paragraph (d)(4)(i)(H) as follows:

The revisions and addition reads as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(H) For the operator of a vessel fishing on behalf of a CDQ group to retain more than the maximum retainable amount of pollock established under § 679.20(e) unless the pollock harvested by that vessel accrues against a CDQ group's pollock CDQ allocation.

(ii) Fixed gear sablefish. For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, to discard sablefish harvested with fixed gear unless retention of sablefish is not authorized under § 679.23(e)(4)(ii) or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

* * * * *

(f) * * *

(3) * * *

(ii) Sablefish. Retain sablefish caught with fixed gear without a valid IFQ permit, and if using a hired master, without an IFQ hired master permit in the name of an individual aboard, unless fishing on behalf of a CDQ group.

* * * * *

7. In § 679.22, revise paragraph (h) to read as follows:

§ 679.22 Closures.

* * * * *

(h) CDQ fisheries closures. See § 679.7(d)(5) for time and area closures that apply to the CDQ fisheries once the non-Chinook salmon PSQ and crab PSQ amounts have been reached.

8. In § 679.24, revise paragraph (b)(1)(ii) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(ii) While directed fishing for sablefish in the Bering Sea subarea.

* * * * *

§ 679.30 [Removed and reserved]

9. Remove and reserve § 679.30.

10. Revise § 679.31 to read as follows:

§ 679.31 CDQ and PSQ reserves, allocations, and transfers.

(a) CDQ and PSQ reserves--(1) Groundfish CDQ reserves. See § 679.20 (b)(1)(ii).

(2) Halibut CDQ reserve--(i) NMFS will annually withhold from the IFQ allocation the proportions of the halibut catch limit that are specified in paragraph (a)(2)(ii) of this section for use as a CDQ reserve.

(ii) The proportions of the halibut catch limit annually withheld for the halibut CDQ program, exclusive of issued QS, are as follows for each IPHC regulatory area (see Figure 15 to this part):

(A) Area 4B. In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be apportioned to a CDQ reserve.

(B) Area 4C. In IPHC regulatory area 4C, 50 percent of the annual halibut quota shall be apportioned to a CDQ reserve.

(C) Area 4D. In IPHC regulatory area 4D, 30 percent of the annual halibut quota shall be apportioned to a CDQ reserve.

(D) Area 4E. In IPHC regulatory area 4E, 100 percent of the annual halibut quota shall be apportioned to a CDQ reserve. A fishing trip limit of 10,000 lb (4.54 mt) applies to halibut CDQ harvested through September 1.

(3) Crab CDQ reserves. Crab CDQ reserves for crab species governed by the Crab Rationalization Program are specified at § 680.40(a)(1) of this chapter. For Norton Sound red king crab, 7.5 percent of the guideline harvest level specified by the State of Alaska is allocated to the crab CDQ reserve.

(4) PSQ reserve. (See § 679.21(e)(3)(i)(A) and (e)(4)(i)(A).)

(b) Allocations of CDQ and PSQ among the CDQ groups—(1) Annual allocations of groundfish, halibut, and crab CDQ reserves among the CDQ groups. The CDQ reserves in paragraphs (a)(1) through (a)(3) of this section and § 679.20(b)(1)(ii) shall be allocated among the CDQ groups based on the CDQ percentage allocations required under 16 U.S.C. 1855(i)(1)(C), unless modified under 16 U.S.C. 1855(i)(1)(H). A portion of the groundfish CDQ reserves will be allocated according to paragraph (b)(2) of this section.

(2) Annual allocations of nontarget groundfish species among the CDQ groups. Seventenths of one percent of each of the annual TACs allocated as groundfish CDQ reserves under § 679.20(b)(1)(ii)(C) and (D), with the exception of the trawl gear sablefish CDQ reserves, shall be allocated among the CDQ groups by the panel established in section 305(i)(1)(G) of the Magnuson-Stevens Act.

(3) Annual allocations of PSQ reserves among the CDQ groups. The annual PSQ reserves shall be allocated among the CDQ groups based on the percentage allocations approved by NMFS on August 8, 2005. These percentage allocations are described and listed in a notice published in the Federal Register on August 31, 2006 (71 FR 51804).

(c) Transfers. CDQ groups may request that NMFS transfer CDQ or PSQ from one group to another group by each group submitting a completed transfer request as described in § 679.5(n)(1). NMFS will approve the transfer request if the CDQ group transferring quota to another CDQ group has sufficient quota available for transfer. If NMFS approves the request, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species. The PSQ will be transferred as of the

date NMFS approves the transfer request and is effective only for the remainder of the calendar year in which the transfer occurs.

11. Revise § 679.32 to read as follows:

§ 679.32 CDQ fisheries monitoring and catch accounting.

(a) Applicability. This section contains requirements for CDQ groups, vessel operators, and managers of processors that harvest or process fixed gear sablefish CDQ, pollock CDQ, or groundfish CDQ. Regulations governing the catch accounting of halibut CDQ are at § 679.40(h).

(b) PSQ catch. Time and area closures required once a CDQ group has reached its salmon PSQ or crab PSQ are listed in § 679.7(d)(5). The catch of salmon or crab by vessels using other than trawl gear does not accrue to the PSQ for these species. The discard of halibut by vessels using pot gear, jig gear, or hook-and-line gear to harvest sablefish CDQ will not accrue to the halibut PSQ if this bycatch has been exempted from the halibut PSC limit in the annual BSAI specifications published in the Federal Register.

(c) Fisheries monitoring requirements and catch accounting sources for vessels sablefish, pollock, or groundfish CDQ fishing--(1) Sablefish CDQ fishing with fixed gear. NMFS will use the following data sources to account for catch made by vessels sablefish CDQ fishing with fixed gear:

(i) Sablefish CDQ. NMFS will use the same information sources that are used to debit sablefish IFQ accounts (see § 679.40(h)) to debit fixed gear sablefish CDQ accounts. This information must be reported through standard reporting requirements in § 679.5.

(ii) Groundfish CDQ. NMFS will use the catch information submitted under standard reporting requirements in § 679.5 to debit any other groundfish CDQ species caught while sablefish CDQ fishing from applicable groundfish CDQ accounts.

(2) Pollock CDQ fishing–(i) Operational requirements for catcher/processors and motherships. Operators of catcher/processors directed fishing for pollock CDQ and motherships taking deliveries of codends from catcher vessels directed fishing for pollock must comply with the following:

(A) Comply with the observer coverage requirements at § 679.50(c)(5)(i)(A).

(B) Notify the observers of CDQ catch before CDQ catch is brought onboard the vessel and notify the observers of the CDQ group and CDQ number associated with the CDQ catch.

(C) Comply with the catch weighing and observer sampling station requirements at § 679.63(a).

(ii) Data sources used for CDQ catch accounting–(A) Catcher/processors and motherships. NMFS will use observer data as the basis to debit pollock CDQ, groundfish CDQ, and PSQ account balances.

(B) Catcher vessels delivering to shoreside processors. NMFS will use the catch information submitted under standard reporting requirements in § 679.5 to debit pollock CDQ, other groundfish CDQ species, and PSQ caught while pollock CDQ fishing from applicable CDQ account balances.

(3) Groundfish CDQ fishing–(i) Operational requirements–(A) Catcher vessels without an observer. Operators of catcher vessels in this category must comply with one of the following requirements:

(1) Catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ species, halibut CDQ, and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (d) of this section, unless retention of groundfish CDQ species is not authorized under § 679.4; discard of the groundfish CDQ species is required under subpart B of this part; or, in waters within the State of Alaska, discard is required by the State of Alaska.

(2) Catcher vessels delivering unsorted codends to motherships must retain all CDQ and PSQ species and deliver them to a mothership that meets the requirements of paragraph (c)(3)(i)(D) of this section.

(B) Catcher vessels with an observer using trawl gear and delivering to shoreside processors. Operators of vessels in this category must comply with all of the following requirements:

(1) Comply with the observer coverage requirements at § 679.50(c)(4)(iii)(E).

(2) Retain all CDQ species and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part; discard of the groundfish CDQ species is required under subpart B of this part; or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(3) Retain all halibut and crab PSQ in a bin or other location until it is counted and sampled by the observer.

(4) Provide space on the deck of the vessel for the observer to sort and store catch samples and a place from which to hang the observer sampling scale.

(C) Catcher/processors using trawl gear. Operators of vessels in this category must comply with the following requirements:

(1) Comply with the observer coverage requirements at § 679.50(c)(4)(iii)(A).

(2) Notify the observers of CDQ catch before CDQ catch is brought onboard the vessel and notify the observers of the CDQ group and CDQ number associated with the CDQ catch.

(3) Comply with the catch monitoring requirements at § 679.93(c).

(D) Motherships taking deliveries of unsorted codends. Operators of vessels in this category must comply with the following requirements:

(1) Comply with the observer coverage requirements at § 679.50(c)(4)(iii)(B).

(2) Notify the observers of CDQ catch before CDQ catch is brought onboard the vessel and notify the observers of the CDQ number associated with the CDQ catch.

(3) Provide an observer sampling station as described at § 679.28(d).

(4) The operator of a mothership taking deliveries of unsorted codends from catcher vessels must weigh all catch on a scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed, unless a provision for doing so is approved by NMFS for the vessel. Each CDQ haul must be sampled by an observer for species composition and the vessel operator must allow observers to use any scale approved by NMFS to weigh partial CDQ haul samples.

(E) Observed catcher vessels using nontrawl gear. Operators of vessels in this category must retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part, discard of the groundfish CDQ or PSQ species is required under subpart B of

this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. All of the halibut PSQ must be counted and sampled for length or average weight by the observer obtained in compliance with § 679.50(c)(4)(iii)(E).

(F) Catcher/processors using nontrawl gear. Operators of vessels in this category must comply with the following requirements:

(1) Each CDQ set on a vessel using nontrawl gear must be sampled by an observer obtained in compliance with § 679.50(c)(4)(iii)(C) or (D) for species composition and average weight.

(2) Notify the observers of CDQ catch before CDQ catch is brought on board the vessel and notify the observers of the CDQ number associated with the CDQ catch.

(3) Provide an observer sampling station as described at § 679.28(d).

(ii) Data sources used for CDQ catch accounting. NMFS will use the following sources to account for the catch of groundfish CDQ and PSQ species caught by vessels groundfish CDQ fishing.

(A) Catcher vessels less than 60 ft (18.3 m) LOA. The weight or numbers of all CDQ and PSQ species will be obtained from the CDQ delivery information submitted by processors to NMFS in accordance with paragraph (d) of this section.

(B) Catcher vessels delivering unsorted codends. The weight and numbers of groundfish CDQ (including pollock) and PSQ species will be determined by applying the species composition sampling data collected for each CDQ haul by the observer on the mothership to the total weight of each CDQ haul as determined by weighing all catch from each CDQ haul on a scale approved under § 679.28(b).

(C) Observed catcher vessels using trawl gear. The estimated weight of halibut and numbers of crab PSQ discarded at sea will be determined by using the observer's sample data. The weight or numbers of all landed groundfish CDQ and salmon PSQ will be derived from the delivery information submitted through the eLandings system, as required at § 679.5(e).

(D) Catcher/processors and motherships using trawl gear. The weight and numbers of CDQ and PSQ species will be determined by applying the observer's species composition sampling data for each CDQ haul to the total weight of the CDQ haul as determined by weighing all catch from each CDQ haul on a scale certified under § 679.28(b).

(E) Observed catcher vessels using nontrawl gear. The weight of halibut PSQ discarded at sea will be determined by using the observer's sample data. The weight or numbers of all landed groundfish CDQ and salmon PSQ will be derived from the delivery information submitted through the eLandings system, as required at § 679.5(e).

(F) Catcher/processors using nontrawl gear. The weight of halibut PSQ and all groundfish CDQ species, except sablefish, will be determined by applying the observer's species composition sampling data to the estimate of total catch weight, if any CDQ species are discarded at sea. Sablefish CDQ caught with fixed gear is accounted for as described in paragraph (c)(1) of this section.

(G) Alternative fishing plan for catcher/processors. A CDQ group may propose the use of an alternative method, such as using only one observer where normally two would be required, sorting and weighing of all catch by species on processor vessels, or using larger sample sizes than could be collected by one observer by submitting an alternative fishing plan to

NMFS. NMFS will review the alternative fishing plan and approve it or notify the qualified applicant in writing if the proposed alternative does not meet the requirements of such a plan.

(1) Alternative fishing plan requirements--(i) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable.

(ii) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition.

(iii) Any proposal to sort catch before it is weighed must ensure that the sorting and weighing process will be monitored by an observer.

(iv) The time required for the level 2 observer to complete sampling, data recording, and data communication duties must not exceed 12 hours in each 24-hour period and the level 2 observer must not be required to sample more than 9 hours in each 24-hour period. NMFS will not approve an alternative fishing plan that would require the observer to divide a 12-hour shift into shifts of less than 6 hours.

(2) Alternative fishing plan distribution and validity. The CDQ group must provide a copy of the NMFS-approved alternative fishing plan to the operator of the approved vessel. The vessel operator must maintain the plan onboard the vessel at all times while it is operating under the alternative fishing plan. Alternative fishing plans are valid for the remainder of the calendar year in which they are approved. Alternatives to the requirement for a certified scale or an observer sampling station will not be approved.

(d) Monitoring requirements for shoreside processors and stationary floating processors—(1) Requirements for processors taking deliveries of pollock CDQ—(i) Catch

weighing. Managers of shoreside processors or stationary floating processors taking deliveries of pollock CDQ must comply with the requirements at § 679.63(c).

(ii) Catch monitoring and control plan. Managers of AFA inshore processors or stationary floating processors taking deliveries of pollock CDQ must follow an approved catch monitoring and control plan as described at § 679.28(g).

(2) Requirements for processors taking deliveries of groundfish CDQ. Managers of shoreside processors and stationary floating processors taking deliveries of groundfish CDQ must comply with the following requirements:

(i) Comply with observer coverage requirements at § 679.50(d)(5)(iii) of this part.

(ii) Provide prior notice to observer of offloading schedule. Notify the observer of the offloading schedule of each CDQ delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the sorting and weighing of the entire delivery.

(iii) CDQ and PSQ by weight. Sort and weigh on a scale approved by the State of Alaska under § 679.28(c) all groundfish and halibut CDQ or PSQ by species or species group.

(iv) PSQ by number. Sort and count all salmon and crab PSQ.

(v) CDQ and PSQ sorting and weighing. Sorting and weighing of CDQ and PSQ must be monitored by an observer.

(e) Use of non-CDQ harvest regulations for vessels in voluntary fishing cooperatives—

(1) Applicability. If approved by NMFS under this paragraph (e), vessels participating in a voluntary fishing cooperative in a non-CDQ sector are authorized to conduct groundfish CDQ fishing under the same regulations that apply while such vessels are used to directed fish in the

non-CDQ fisheries and are not required to comply with the CDQ harvest regulations in paragraph (c)(3)(i) of this section.

(2) Who may apply? A CDQ group representative, a representative of an association representing CDQ groups, or the authorized representative of a voluntary fishing cooperative may submit an application to use alternative CDQ harvest regulations.

(3) Application process— (i) Application documents. A completed application is comprised of an application form and a copy of the cooperative contract or an affidavit, as described below:

(A) Application form. The application to use alternative CDQ harvest regulations is available on the NMFS Alaska Region Web site at www.alaskafisheries.noaa.gov. All information fields must be accurately completed, including information about the applicant, the voluntary fishing cooperative, and the vessels participating in the voluntary cooperative.

(B) Cooperative contract or affidavit. The application must include either a copy of the current voluntary fishing cooperative contract demonstrating participation in the cooperative by the owners of each of the vessels named on the application form or an affidavit that includes the information required in this paragraph (e)(3)(i)(B). NMFS must be able to determine the following information from the voluntary fishing cooperative contract or the affidavit: the name of the authorized representative of the cooperative; the printed names and signatures of each vessel owner that is a party to the voluntary cooperative; the vessel name, FFP number, and LLP license number for each vessel managed under the cooperative; and the target species, processing mode, gear types, and management area(s) associated with the voluntary cooperative's federal fishing operations. If an applicant submits a copy of the voluntary fishing cooperative contract

but it does not contain this information, the applicant also must submit a written affidavit that provides all of the information required in this paragraph (e)(3)(i)(B) that is not included in the cooperative contract.

(ii) Application submission. The application for use of non-CDQ harvest regulations must be submitted to the Regional Administrator per the instructions on the application form.

(iii) Submittal and duration—(A) Submittal. An application requesting approval for the use of non-CDQ harvest regulations may be submitted to NMFS at any time.

(B) Duration. Once approved, an application to use alternative CDQ harvest regulations is effective as of the date on which NMFS approves the application. The approval is effective until the requesting entity withdraws its application, or until there is a change in the membership of the voluntary cooperative, whichever occurs first.

(iv) NMFS review. NMFS will review an application to use non-CDQ harvest regulations to determine that all of the information submitted complies with the requirements of paragraphs (e)(2) and (3) of this section, and that the vessels listed on the application form represent a majority of the vessels participating in the applicable sector. If NMFS determines that the application is deficient, NMFS will notify the applicant in writing to identify the discrepancies and provide the applicant with an opportunity to correct them.

(v) NMFS determinations and administrative appeal. NMFS will approve an application to use non-CDQ harvest regulations when it determines that all of the information submitted with the application complies with the requirements of paragraphs (e)(2) and (3) of this section, the vessels listed on the application form represent a majority of vessels participating in an applicable sector, and the CDQ harvest regulations are more restrictive than the non-CDQ

regulations for the applicable sector. NMFS will issue an initial administrative determination (IAD) disapproving the application and the reasons for its disapproval if the application is incomplete, the voluntary cooperative does not represent a majority of the vessels participating in the sector, or the CDQ harvest regulations are not more restrictive than the non-CDQ regulations for the applicable sector. An applicant who receives an IAD disapproving an application may appeal under the procedures set forth at § 679.43.

(vi) Amendments. The entity applied for use of non-CDQ harvest regulations must promptly notify NMFS of any changes in the voluntary fishing cooperative's membership by re-applying in accordance with this paragraph (e). Amendments to an approved application to use alternative CDQ harvest regulations may be submitted to NMFS at any time, and will be reviewed under the requirements of this paragraph (e).

12. In § 679.43, paragraph (a) is revised to read as follows:

§ 679.43 Determinations and appeals.

(a) General. This section describes the procedure for appealing initial administrative determinations made in this title under parts 300, 679, 680, and subpart E of part 300 of this chapter.

* * * * *

13. In § 679.50, revise paragraphs (c)(2)(iii), (c)(4), and (d)(5) to read as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(c) * * *

(2) * * *

(iii) Sablefish fishery. In a retained catch of IFQ and CDQ sablefish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

* * * * *

(4) Fixed gear sablefish CDQ, pollock CDQ, and groundfish CDQ fisheries. The owner or operator of a vessel fishing for sablefish CDQ with fixed gear, pollock CDQ fishing, or groundfish CDQ fishing as defined in § 679.2 must comply with the following observer coverage requirements while transporting (catcher vessel only), harvesting, processing, or taking delivery of CDQ or PSQ species.

(i) Fixed gear sablefish CDQ fishery. Catcher vessels and catcher/processor vessels equal to or greater than 60 ft (18.3 m) LOA participating in the fixed gear sablefish CDQ fishery must comply with the observer coverage requirements in paragraphs (c)(1)(iv) through (viii) and (c)(2)(iii) of this section.

(ii) Pollock CDQ fishery--(A) A catcher/processor that is pollock CDQ fishing or a mothership taking deliveries from catcher vessels that are pollock CDQ fishing must comply with the observer coverage and workload requirements in paragraph (c)(5) of this section.

(B) A catcher vessel that is pollock CDQ fishing must comply with the observer coverage requirements in paragraph (c)(5)(i)(D) of this section.

(iii) Groundfish CDQ fisheries--(A) Catcher/processors using trawl gear. A catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear and groundfish CDQ fishing, except catcher/processors directed fishing for pollock CDQ, must comply with the observer

coverage requirements at paragraph (c)(6)(i) of this section and the catch monitoring requirements in § 679.93(c).

(B) Motherships. A mothership that receives groundfish CDQ species from catcher vessels using trawl gear to participate in a directed fishery for CDQ groundfish species must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

(C) Catcher/processors using hook-and-line gear. A catcher/processor using hook-and-line gear to directed fish for groundfish CDQ species must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section aboard the vessel, unless NMFS approves an alternative fishing plan under § 679.32(c)(3) authorizing the vessel to carry only one lead level 2 observer. At least one of the level 2 observers must be certified as a lead level 2 observer.

(D) Catcher/processors using pot gear. A catcher/processor using pot gear to directed fish for groundfish CDQ species must have at least one lead level 2 observer as described at paragraphs (j)(1)(v)(D) and (E) of this section aboard the vessel.

(E) Catcher vessels. A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using any gear to directed fish for groundfish CDQ species, except a catcher vessel using trawl gear that delivers only unsorted codends to a mothership or catcher/processor, must have at least one level 2 observer as described at paragraph (j)(1)(v)(D) of this section aboard the vessel.

(F) Limitations. The time required for the level 2 observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period, and, the level 2 observer is required to sample no more than 9 hours in each 24-hour period.

* * * * *

(d) * * *

(5) Accepts deliveries of fixed gear sablefish CDQ, pollock CDQ, and groundfish CDQ must comply with the following observer coverage requirements.

(i) Fixed gear sablefish CDQ fishery. Shoreside processors or stationary floating processors taking delivery of fixed gear sablefish CDQ must comply with the observer coverage requirements in paragraphs (d)(1) and (d)(2) of this section.

(ii) Pollock CDQ fishery. Each shoreside processor or stationary floating processor taking delivery of pollock CDQ must comply with the observer coverage requirements and duty restrictions in paragraph (d)(6) of this section.

(iii) Groundfish CDQ fisheries. Each shoreside processor or stationary floating processor taking deliveries of groundfish CDQ must have at least one level 2 observer as described at paragraph (j)(1)(v)(D) of this section present at all times while groundfish CDQ is being received or processed.

(iv) Observer working hours. The time required for the level 2 observer to complete sampling, data recording, and data communication duties may not exceed 12 hours in each 24-hour period, and the level 2 observer is required to sample no more than 9 hours in each 24-hour period.

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14. At each of the locations shown in the “Location” column of the following table, remove the phrase indicated in the “Remove” column and replace it with the phrase indicated in the “Add” column for the number of times indicated in the “Frequency” column.

§§ 679.2, 679.5, 679.7, 679.27, 679.28, 679.50, 679.84, 679.93 [Amended]

Location	Remove	Add	Frequency
§ 679.2 definition of “CDQ reserve”	set aside for purposes of	allocated to	1
§ 679.2 definition of “Fixed gear sablefish CDQ reserve”	§ 679.20(b)(1)(iii)(B). See also § 679.31.	§ 679.20(b)(1)(ii)(B).	1
§ 679.2 definition of “Halibut CDQ reserve”	§ 679.31(b)	§ 679.31(a)(2)	1
§ 679.5(a)(1)(iii)(A)	CDQ group number	CDQ number	1
§ 679.5(c)(3)(ii)(A)(1)	CDQ group number	CDQ number	1
§ 679.5(c)(3)(ii)(B)(1)	CDQ group number	CDQ number	1
§ 679.5(c)(3)(v)(D)	CDQ group number	CDQ number	1
§ 679.5(c)(4)(ii)(A)(1)	CDQ group number	CDQ number	2
§ 679.5(c)(4)(ii)(B)(2)	CDQ group number	CDQ number	1
Redesignated § 679.7(d)(5)(i)(A)	an eligible	a	1
Redesignated § 679.7(d)(5)(i)(B)	an eligible	a	1
Redesignated § 679.7(d)(5)(i)(C)	an eligible	a	1
Redesignated § 679.7(d)(5)(ii)(B)	an eligible	a	1
§ 679.27(j)(5)(ii)	a NMFS certified observer	an observer	1
§ 679.28(c)(4)(v)(D)	a NMFS-certified observer	an observer	1
§ 679.28(g)(7)(vii)	NMFS-certified observers	observers	1
§ 679.28(g)(7)(viii)	NMFS-certified observer	observer	1
§ 679.50(c)(5)(i)(A), (c)(5)(i)(B), (c)(5)(i)(C), (c)(6)(i), (c)(7)(i)(A), (c)(7)(i)(B), and (d)(6)(i)	NMFS-certified observers	observers	1
§ 679.50(g)(1)(iii)(A)	NMFS-certified observers	observers	2
§ 679.50(c)(6)(ii) and (c)(7)(i)(E)	NMFS-certified observer	observer	1
§ 679.50(c)(7)(ii)	a NMFS-certified observer	an observer	1
§ 679.50(d)(6)(i)	a NMFS certified observer	an observer	1
§ 679.50(j)(1)(v)(D) and (j)(3)(iv)	A certified observer	an observer	1
§ 679.84(c)(1)	a NMFS-certified observer	an observer	1

§ 679.84(d)(1) and (d)(2)	a NMFS-certified observer	an observer	2
§ 679.93(c)(1)	a NMFS-certified observer	an observer	1
§ 679.93(d)(1)	a NMFS-certified observer	an observer	2

15. Table 7 to part 679 is revised to read as follows:

Table 7 to Part 679--Community Development Quota Groups and Communities Eligible to Participate in the CDQ Program

<u>Aleutian Pribilof Island Community Development Association</u> Akutan Atka False Pass Nelson Lagoon Nikolski Saint George <u>Bristol Bay Economic Development Corporation</u> Aleknagik Clark's Point Dillingham Egegik Ekuk Ekwok King Salmon/Savonoski Levelock Manokotak Naknek Pilot Point Port Heiden Portage Creek South Naknek Togiak Twin Hills Ugashik <u>Central Bering Sea Fishermen's Association</u> Saint Paul <u>Coastal Villages Region Fund</u> Chefornak Chevak Eek Goodnews Bay Hooper Bay Kipnuk Kongiganak Kwigillingok	<u>Coastal Villages Region Fund, continued</u> Mekoryuk Napakiak Napaskiak Newtok Nightmute Oscarville Platinum Quinhagak Scammon Bay Toksook Bay Tuntutuliak Tununak <u>Norton Sound Economic Development Corporation</u> Brevig Mission Diomedes Elim Gambell Golovin Koyuk Nome Saint Michael Savoonga Shaktoolik Stebbins Teller Unalakleet Wales White Mountain <u>Yukon Delta Fisheries Development Association</u> Alakanuk Emmonak Grayling Kotlik Mountain Village Nunam Iqua
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PART 680— SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA

16. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109-241; Pub. L. 109-479.

17. In § 680.2, revise the definitions for “CDQ community” and “CDQ group” in alphabetical order to read as follows:

§ 680.2 Definitions.

* * * * *

CDQ community means a community identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(A). CDQ communities are listed in Table 7 to 50 CFR part 679.

CDQ group means an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(A). CDQ groups are listed in Table 7 to 50 CFR part 679.

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